



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Commercial Energies, Inc.

**File:** B-237572

**Date:** February 7, 1990

Gregory Kellam Scott, Esq., Moore, Smith & Bryant, for the protester.  
William H. Weeks, for Assinboine Marketing Associates, Ltd. and Thomas L. Dobson, for Coastal Gas Marketing Company, interested parties.  
Colonel Herman A. Peguese, Department of the Air Force, for the agency.  
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

### DIGEST

General Accounting Office denies protest concerning the proper method of applying the small disadvantaged business preference to procurements of natural gas where the identical issue was resolved in a recent and previous protest involving the same agency and the same type of procurement.

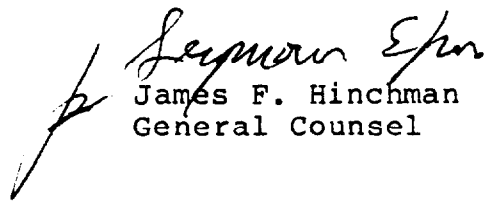
### DECISION

Commercial Energies, Inc. (CEI), protests any award of a contract under request for proposals (RFP) No. F39601-89-R0016 issued by the Department of the Air Force for natural gas for Ellsworth, Minot, and Cavalier Air Force Bases. The solicitation is subject to the 10 percent preference which was established by Department of Defense regulations which were issued to implement section 107 of the National Defense Authorization Act for Fiscal Year (FY) 1987, Pub. L. No. 99-661, 100 Stat. 3978 (1986), and section 806 of the Defense Authorization Act for FY's 1988 and 1989, Pub. L. No. 100-180, 100 Stat. 1020, 1126 (1987). CEI contends that the Air Force improperly applied the solicitation's small disadvantaged business evaluation preference in that it computed the amount of preference only on the cost adjustment factors rather than on the estimated contract cost, which include the index price of the natural gas.

047740/140617

We deny the protest.

The issue raised in this protest is identical to the one resolved in Hudson Bay Natural Gas Corp., B-237264, Feb. 5, 1990, 90-1 CPD ¶     , which involved the application of the 10 percent SDB preference in another Air Force natural gas solicitation for Whiteman and McConnell Air Force Bases. Here, the protester relies upon the same arguments considered in the previous decision in which we held that the application of the SDB evaluation preference to only cost adjustment factors constituted a reasonable application by the Air Force of the 10 percent preference called for under its regulations.<sup>1/</sup> We determined that it was reasonable, in the context of a contract which incorporated index pricing, to limit the preference to those portions of the contract which were actually priced by the offerors, and for which the amount paid did not fluctuate. Accordingly, we denied Hudson Bay's protest. Since the issue raised by CEI in this protest is identical to the one resolved in our decision of February 5, it also is denied.

  
James F. Hinchman  
General Counsel

---

<sup>1/</sup> The protest of Hudson Bay was filed approximately 3 weeks prior to that of CEI. Since the issue raised by both protesters was identical, and one of first impression in our Office, we informed CEI of Hudson Bay's earlier protest and invited it to attend a scheduled bid protest conference, in which representatives of Hudson Bay, CEI and the Air Force specifically addressed the precise issue of this protest.